



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,989	03/16/2004	Dirk Van Dijk	044186.001	2508
25461	7590	06/01/2006		
SMITH, GAMBRELL & RUSSELL, LLP 1230 PEACHTREE STREET, N.E. SUITE 3100, PROMENADE II ATLANTA, GA 30309-3592				
			EXAMINER DIXON, MERRICK L	
			ART UNIT 1774	PAPER NUMBER

DATE MAILED: 06/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/801,989	Applicant(s) VAN DIJK ET AL.	
	Examiner Merrick Dixon	Art Unit 1774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43,45,-50 is/are pending in the application.
- 4a) Of the above claim(s) 1-29,41 and 42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 30-40,43,45-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


MERRICK DIXON
PRIMARY EXAMINER

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1774

1

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2

Claims 30-33,39,40,43,45-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Zen(US 6189269 B1) in view of Markush(US 4097422).

The primary reference teaches the basic claimed invention including an elongated construction element of thermoplastic synthetic material with reinforcing elements therein- col 2, lines 40-49; col 8, lines 50-56; col 7, lines 22-52; col 9, lines 53-63. The primary reference fails to teach wood particles in its thermoplastic synthetic material.

The secondary reference to Markush, however, teaches that it is known in the art to include wood particles in thermoplastic material such as taught by the primary reference- col 13, lines 53-60; col 22, lines 49-61; col 25, lines 63-37. It would have been obvious to one of ordinary skill in the art at the time the invention is made to combine the teachings of the secondary reference and facilitate the primary reference with such wood particles, to impart desired characteristic to the patented element of the primary reference, in the absence of unexpected results. , Concerning claims 49 and 50, the secondary reference teaches glass fibers- col 22, lines 14-16 - see primary

Art Unit: 1774

reference, col 2, lines 40-45; col 7, line 35. Concerning claims 31-33, the secondary reference teaches the claimed wood [particle amounts in col 13, lines 54-56. concerning claims 39 , 43, 45-48and 40, the primary reference teaches similar claimed profile in figs 3 and 4. see entire reference.

3

Claims 34-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Zen('269) and Markush('422) as applied to claims 30-33,39,40,43-50 above, and further in view of West et al(US 3856891).

The West et al patent teaches that it is known in the art to utilize elongated construction element of similarly claimed modulus as required by claims 34-36- see claims 1,2..

Concerning claims 37 and 38, the '891 reference teaches its product "nailable" - col 2, lines 30-35.

4

Applicant's arguments filed 3-16-06 have been fully considered but they are not persuasive. Applicants argue that De Zen teaches away from the claimed invention for the reference uses short fibers. The examiner is unable to find such disclosure from the reference of its fibers being short relative to another type fiber. In other word, "short" is so relative that it could read on the claimed invention's fibers. Further, it is thus submitted that any change of sizes is generally recognized as being within the level of

Art Unit: 1774

ordinary skill in the art. In re Rose, 105, USPQ 237(CCPA 1985). Applicants finally argue that the reference fail to teach embedded reinforcing elements. The examiner disagrees and points applicants to secondary reference, col 13, lines 54-56.

5

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6

This application contains claims 1-29,41,42 drawn to an invention nonelected with . A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

7

Art Unit: 1774

Applicants who wish to send a facsimile (draft copies) for the examiner's immediate review can do so by using the Examiner's personal fax number at 571-273-1520. The faxing of all papers must conform with the notice published in the Official Gazette, 1096 O.G. 30 (November 15, 1989). **NOTE: All facsimiles sent to the examiner's**

personal fax number should be in draft-forms and will be treated as informal.

Same facsimiles will not be entered in the related applications unless otherwise agreed and noted by the examiner.

The fax number for all other fascimile is 571-273-8300.

Information about **the status of an application** may be obtained from the Patent Information Retrieval system (**Private PAIR**).

Status inquires for **published applications** may be retrieved from either **Private PAIR** or **Public PAIR**. Questions about the PAIR system should be directed to the Electronic Business Center at **866-217-9197**.

Any questions concerning the instant communication should be directed to Examiner Dixon, at 571-272-1520, Mondays, Wednesdays and Thursdays, between 12 noon and 8 PM, eastern time .

A handwritten signature in black ink, appearing to read 'Merrick Dixon', with a long horizontal flourish extending to the right.

Merrick Dixon

Primary Examiner

Group 1700